

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF THE PETITION
FOR ALTERNATIVE ABATEMENT STANDARDS
FORMER PRICE'S VALLEY GOLD NORTH DAIRY
BERNALILLO, SANDOVAL COUNTY, NEW MEXICO**

WQCC-16-02(A)

**D&G Price Limited Partnership,
Petitioner**

**UNOPPOSED MOTION TO CORRECT DECISION AND ORDER
GRANTING ALTERNATIVE ABATEMENT STANDARDS**

COMES NOW the Petitioner D&G Price LP, by and through undersigned counsel of record, and hereby requests that the Water Quality Control Commission (WQCC) correct its Decision and Order Granting Alternative Abatement Standards (the Decision), issued on October 14, 2016 in this matter, to allow a modification of the deed restriction incorporated in the Order and to correct the name and address on the deed restriction. A copy of the Decision is attached hereto as Exhibit A, a copy of the filed "Deed Recordation Covenant Restricting and Prohibiting Use of Groundwater" is attached as Exhibit B, a redline/strikeout copy of the proposed corrective deed is attached as Exhibit C and a clean version of the proposed corrective deed is attached as Exhibit D. In support of this Motion, the Petitioner states as follows.

BACKGROUND

The Decision sets forth the procedural and technical basis for the WQCC's order approving the Petition for Alternative Abatement Standards Former Price's Valley Gold North Dairy, Bernalillo, Sandoval County, New Mexico (the Petition). The Decision states that "Petitioner will record a deed restriction in the Sandoval County real property records prohibiting construction of wells in the Valley Fill Aquifer on that portion to subject to the AAS [Alternate Abatement Standards]. The deed notice will provide owners, operators, prospective buyers, and others with notice and information regarding the groundwater condition in the Valley Fill Aquifer. The deep regional Upper Santa Fe Group Aquifer can still be used for water supply on the property. A copy of the deed notice is included as Appendix G to the

Petition.” (Exhibit A at ¶23.a). The WQCC ordered that the Petitioner and the Department “shall take the necessary steps to implement the institutional controls proposed in the Petition, namely, the deed restrictions and the State Engineer well restriction order.” (*Id.* at p.12 ¶4).

The deed, which was attached as Appendix G to the Petition, includes the following restrictive language: “Whereas the Property . . . shall be used for non-residential purposes and no wells or devices shall be installed on the property to use the groundwater and no use of the groundwater shall be allowed; therefore, the owner of the property prohibits, for itself and all future successors or assigns of the property, installation of wells or any other device to use groundwater and any use of the groundwater is completely prohibited. This restriction and prohibition shall be recorded with the property and is binding on future successors and assigns.” (Exhibit B).

At the time the Petition was prepared, including the deed restriction in Appendix G, representatives from D&G Price, LP (DGP) believed that the property was zoned commercial and that residential use was prohibited by zoning. Therefore, the language restricting the property to non-residential use was included in the deed restriction and incorporated by reference into the Decision. (Exhibit A at ¶23.a and p.12 ¶4). Petitioner now requests that the WQCC issue an order allowing the deed restriction to be amended to remove the phrase “for non-residential purposes” and to change the name and address on the deed from D&HGP to D&G Price, LP, 12231 Academy Rd. NE, #301, Albuquerque, New Mexico, 87111. (*See* Exhibits C and D).

Dudley Price died on or about June 24, 2018. Following his death, there have been efforts to dispose of property in his estate, which includes the subject property. During the efforts to market the parcel subject to the Decision, it has been determined that the property was not zoned commercial at the time of the proposed deed restriction or at the time of the Decision. Instead, current information demonstrates that the parcel is zoned for Special Use, which allows multi-unit residential development. Currently, there is a purchase contract in place that would allow DGP and the Estate of Dudley Price to sell the parcel to a developer for the development of multi-unit residential buildings on the property. The sale cannot proceed to closing without correction of the deed restriction.

Based on a review of the April 28, 2016 Petition, the transcript for the public hearing that was held on September 13, 2016, and the Decision, there was no significant testimony or evidence presented regarding the importance or necessity of the non-residential use restriction of the property. (*See* Exhibit E, testimony of John Price; Exhibit A, Decision). The testimony and evidence regarding health and safety related to a complete restriction on the use of the Valley Fill groundwater for any purpose by any person or entity occupying the property. A restriction with the State Engineer's Office prohibiting the development of groundwater wells in the Valley Fill beneath the parcel is included in the Decision. (Exhibit A at ¶23.b; Exhibit F, correspondence between NMED and State Engineer's Office, attached hereto). The subject property has access to municipal water and wastewater systems and is required to hook-up to these systems to be developed. (*See* Exhibit A at ¶24). Removing the phrase "shall be used only for non-residential purposes" will not change the restriction prohibiting the construction of wells in the Valley Fill Aquifer on the portion of the property subject to the AAS. (Exhibit A at ¶23.a).

The NMED Ground Water Quality Bureau (GWB) has been consulted as to whether the correction of the deed restriction removing the phrase "shall be used only for non-residential purposes" is technically satisfactory to them. The NMED GWB concurs that the basis for NMED's support for the Decision was not a non-residential use limitation but rather the complete prohibition of Valley Fill groundwater development, which will remain unaffected by this Motion. Accordingly, NMED does not object to correcting the Decision and modifying the deed restriction.

Pursuant to NMAC 20.1.3.113, the Water Quality Control Commission variance hearing regulations, which govern alternative abatement proceedings, allow for motions to be filed with the Commission. In this matter, the zoning status was not discovered until the summer of 2021. Since September, 2016 and continuing permanently into the future, the State Engineer prohibition on groundwater development in the Valley Fill Aquifer beneath the subject parcel will remain in effect. (Exhibit A at ¶23.b; Exhibit F). Further the land use requirements for developing this parcel require that the parcel be hooked up to municipal water and wastewater. (*See* Exhibit A at ¶24.a). There is no

justification in the record for the “non-residential” use only deed restriction language. It does not correctly identify the zoning status of the subject property.

Based on the information set forth above, the Petitioner requests that the Decision be corrected to reference a replacement Exhibit G(1), which eliminates the language “shall only be used for non-residential purposes” and corrects the name and address on the restrictive deed. No other change to the Decision or Exhibit G is requested. Therefore, the Petitioner requests that the WQCC enter an Order allowing the Petitioner to replace the Deed Recordation Covenant Restricting and Prohibiting Use of Groundwater (Exhibit B, hereto), with the Corrective Deed Recordation Covenant Restricting and Prohibiting Use of Groundwater attached hereto as Exhibit D.

Respectfully submitted,

DOMENICI LAW FIRM, P.C.

/s/ Pete Domenici

Pete Domenici, Esq.

320 Gold Ave. SW, Suite 1000

Albuquerque, New Mexico 87102

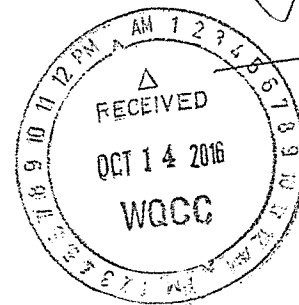
505-883-6250

pdomenici@domenicilaw.com

I certify that a copy of the foregoing was e-mailed to Counsel for NMED on this 18th day of November, 2021.

/s/ Pete Domenici

Pete V. Domenici, Esq.



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF THE PETITION
FOR ALTERNATIVE ABATEMENT STANDARDS
FORMER PRICE'S VALLEY GOLD NORTH DAIRY,
BERNALILLO, SANDOVAL COUNTY, NEW MEXICO**

WQCC 16-02(A)

D&G Price Limited Partnership,

Petitioner

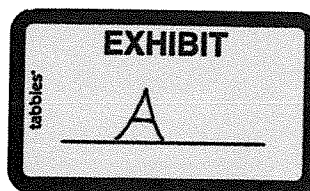
**DECISION AND ORDER GRANTING
ALTERNATIVE ABATEMENT STANDARDS**

This matter comes before the New Mexico Water Quality Control Commission ("WQCC" or "Commission") upon the Petition for Alternative Abatement Standards Former Price's Valley Gold North Dairy Bernalillo, Sandoval County, New Mexico ("Petition") filed by D&G Price Limited Partnership ("Petitioner") on April 28, 2016. A public hearing in this matter was held before the Commission on September 13, 2016. The Commission heard all evidence, deliberated, and voted to approve the Petition for the reasons set forth below.

FINDINGS OF FACT

I. Procedural Findings

1. Pursuant to the Commission's Regulations at 20.6.2 NMAC, the New Mexico Environment Department ("NMED" or "Department") issued ground water discharge permit DP-437 for Price's Valley Gold North Dairy ("PVGND") in 1987. Dairy operations ceased in 1998 and DP-437 was terminated in 2006. *See* Former Price's Valley Gold Dairy Bernalillo, Sandoval County, New Mexico Dairy's Statement of Intent to Present Technical Testimony ("PVGND Statement of Intent"), at 3; Testimony of Ali Furrall, NMED Exhibit 1, at 3.



2. On April 28, 2016, Petitioner submitted the Petition to the Commission requesting approval of alternative abatement standards for three contaminants within the Valley Fill Aquifer. *See* Petition at 5-6.

3. On May 10, 2016, the Department and Petitioner appeared before the Commission during its regular meeting to request a hearing on the Petition, with the Department indicating its intent to support the Petition. The Commission determined that a public hearing would be held on the Petition, and authorized the Chair to appoint a Hearing Officer to schedule the hearing and serve as Hearing Officer pursuant to 20.1.3.10.B NMAC. The Chair appointed Jeffrey N. Holappa, Administrative Law Judge for the New Mexico Environment Department, to serve as Hearing Officer on May 12, 2016.

4. On June 16, 2016, the Department filed its Response to the Petition, in accordance with 20.1.3.18.A(3) NMAC, recommending that the requested alternative abatement standards be granted.

5. On August 11, 2016, the Hearing Officer issued a Scheduling Order pursuant to 20.1.3.18.C(2) and 20.1.3.16.B(2) NMAC, setting the hearing for the Commission's regular meeting on September 13, 2016.

6. Public notice of the hearing on the Petition, which notice expressly included the proposal for well restrictions to be issued by the State Engineer, was published and provided to interested persons as required by 20.1.3.18.C(2) and 20.1.3.16.C NMAC.

7. The Department and Petitioner filed statements of intent to present technical testimony during the public hearing. No other party filed a statement of intent.

8. A public hearing was held before the Commission on September 13, 2016 in Santa Fe, New Mexico, in accordance with the applicable procedures set forth in 20.1.3

NMAC. At the hearing, all persons were provided a reasonable opportunity to present evidence to the Commission and to conduct cross examination.

II. Substantive Findings

A. Background

1. The former PVGND property is located on the east side of New Mexico Highway 528 in Bernalillo, New Mexico. The northern portion of the original dairy has been closed and is occupied by Walmart and other commercial businesses. *See* Petition, Figure 1. The portion of the property subject to the Petition, depicted as Lot 5-B in the Petition at Figure 2, is comprised of approximately 7.4 acres located north of Venada Arroyo and near the intersection of Spanish Bluff Street and Venada Plaza Drive, as shown on the Venada Plaza Plat, Section 36, Township 13N, Range 3E. *See* NMED Exhibit 1, at 2; Pre-Filed Testimony of Jay Snyder (“Snyder Testimony”), at 3.
2. In connection with the closure of dairy operations on the Property, investigations and studies were performed which indicated that groundwater standards were exceeded and soil was contaminated on portions of the Property at the time of closure. *See* NMED Exhibit 1, at 3.
3. In 2006, DP-437 was terminated and investigation and remediation of the site has since proceeded under the WQCC’s abatement regulations, sections 20.6.2.4000 through 20.5.2.4116 NMAC. Environmental site conditions have been fully characterized and the Stage 1 Abatement Plan has been completed. The site is currently in Stage 2 Abatement and is in Long Term Monitoring. *See id.*
4. Two interim abatement actions approved by the Department have been performed at the site: in situ denitrification was performed in 2008, and a groundwater

extraction and discharge system was operated from October 2013 until July 2015. These abatement actions failed to achieve standards, and monitoring wells in the Valley Fill Aquifer continue to show groundwater is impacted by nitrogen, chloride, and total dissolved solids (“TDS”). *See* NMED Exhibit 1, at 3; Synder Testimony at 5-4.

5. The Valley Fill Aquifer is a perched aquifer of limited extent that is hydrologically separate from the Upper Santa Fe Aquifer. While there is some communication between the VFA and the water flowing through the Rio Grande alluvial aquifer, it is not sufficient to move the contamination out of the VFA and into the river. Thus, the contaminated plume is essentially stranded within the VFA. *See* Tr. 58:18 – 63:25; Tr. 81:8.

6. New Mexico’s relevant numerical ground water quality standards set forth in 20.6.2.3103 NMAC are: 10.0 mg/l for nitrate, 250.0 mg/l for chloride, and 1000.0 mg/l for TDS. *See* Snyder Testimony at 6.

7. Petitioner has proposed alternative abatement standards (“AAS”) for the property of 220 mg/L for nitrate, 350 mg/L for chloride, and 3,310 mg/L for TDS. *See* NMED Exhibit 1, at 4, 10.

8. The AAS are requested in perpetuity to facilitate site closure and development, with institutional controls proposed, including a deed restriction and domestic well restrictions issued by the Office of the State Engineer, to ensure that the VFA is not used as a potable water supply in the future. *See* Petition at 7; Tr 48:20 – 51:10; Tr. 78:3 – 82:9, NMED Exhibit 1, at 7-9.

B. Process and Requirements

9. Alternative abatement standards fall within the Commission's authority to grant a variance from any requirement of the water quality regulations, pursuant to Section 74-6-4(H) of the Water Quality Act.
10. Section 20.6.2.4103.F(1) of the Commission's abatement regulations provides that a responsible person may submit a petition for approval of AAS any time after submission of a Stage 2 abatement plan.
11. Petitioner has completed the Stage 2 abatement process. *See Snyder Testimony at 4; NMED Exhibit 1, at 3.*
12. Pursuant to 20.6.2.4103.F(2), a petition for AAS must identify the water contaminants for which alternative standards are proposed.
13. Pursuant to 20.6.2.4103.F(2), a petition for AAS must identify the alternative standards proposed.
14. Pursuant to 20.6.2.4103.F(2), a petition for AAS must identify the three-dimensional body of water pollution for which approval is sought.
15. Pursuant to 20.6.2.4103.F(1)(a) NMAC, a petitioner for AAS must demonstrate that compliance with the abatement standards in 20.6.2.4103.A is not feasible, by the maximum use of technology within the economic capability of the responsible person, or that there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standards set forth in Section 20.6.2.4103 NMAC) to be obtained.
16. Pursuant to 20.6.2.4103.F(1)(b) NMAC, a petitioner for AAS must demonstrate that the proposed alternative standards are technically achievable and cost-benefit justifiable.

17. Pursuant to 20.6.2.4103.F(1)(c) NMAC, a petitioner for AAS must demonstrate that compliance with the proposed alternative standards will not create a present or future hazard to public health or undue damage to property.

18. A “hazard to public health” exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, of any toxic pollutant affecting human health is present in the water. *See* 20.6.2.7.AA NMAC.

19. The Water Quality Act provides that the Commission may grant a variance from a regulation of the Commission for a period of time specified by the Commission. *See* NMSA 1978, § 74-6-4(H) (as amended through 2009).

20. Pursuant to 20.6.2.4103.F(2), a petitioner for AAS must specify the information required for variance petitions under Subsection 20.6.2.1210.A NMAC, including, among other requirements, the period of time for which the variance is requested.

C. Requirements Met – 20.6.2.4103.F(1)(a)

21. The Petitioner has demonstrated that compliance with the abatement standards in 20.6.2.4103.B is not feasible, pursuant to 20.6.2.4103.F(1)(a) NMAC. Several decades of natural attenuation and two engineered cleanup actions – in situ denitrification and groundwater pumping and discharge – have not reduced contaminant concentrations in groundwater in the VFA to the 20.6.2.3103 NMAC standards. After cessation of groundwater pumping, concentrations have reverted to pre-abatement levels in select wells in areas where the VFA thins and is difficult to hydraulically stress (due to low transmissivity related to minimal aquifer thickness). The VFA is stagnant and perched, and the lack of both

groundwater flow-through with attendant dispersion and intrinsic denitrification renders it very difficult to reduce concentrations. *See* NMED Exhibit 1, at 5-7; Snyder Testimony at 8-9.

22. Petitioner has also demonstrated that there is no reasonable relationship between the costs and benefits of continuing abatement and the social costs and benefits of doing so. Because of the nature of the Valley Fill Aquifer, as discussed previously, it is likely that no abatement effort at any cost will achieve Section 3103 standards. *See* NMED Exhibit 1, at 7; Snyder Testimony, at 10.

23. Petitioner has proposed the following institutional and government controls to prevent future use of the Valley Fill Aquifer as a source of potable water in order to mitigate social costs from the proposed AAS:

- a. Petitioner will record a deed restriction in the Sandoval County real property records prohibiting construction of wells in the Valley Fill Aquifer on that portion subject to the AAS. The deed notice will provide owners, operators, prospective buyers, and others with notice and information regarding the groundwater condition in the Valley Fill Aquifer. The deep regional Upper Santa Fe Group Aquifer can still be used for water supply on the Property. A copy of the deed notice is included as Appendix G to the Petition.
- b. The Department will petition the New Mexico State Engineer under State Engineer regulation 19.27.5.13.A to issue an Order prohibiting construction of a well in the affected water-bearing zone of the Valley Fill Aquifer, Lot 5-B and contiguous portions of Venada Plaza Drive. The State Engineer has the

required information and will issue the Order upon the Department's formal request.

See NMED Exhibit 1, at 7-8; NMED Exhibit 4.

24. Additionally, the following ordinances and rules further ensure that water from the Valley Fill Aquifer will not be used as source of potable water:

- a. The Town of Bernalillo Water Use and Water Rate Ordinance, Ordinance 81, Article 4, Section 11 provides "At such time as a public water main becomes available within two hundred (200) feet of a property line served by a private water well, a direct connection shall be made to the public water system in compliance with this Ordinance, within 90 days." Water and sewer lines have been installed along existing streets in the Venada Plaza Development. *See* Petition, Appendix G. Thus, under the above ordinance, city water supply will be provided to all buildings on the Property.
- b. The New Mexico State Engineer's regulations at 19.27.4 NMAC contain provisions that prevent construction of a water supply well in contaminated groundwater. *See* 19.27.4.29 NMAC (requiring wells to be constructed to prevent contamination, inter-aquifer exchange of water, flood water contamination of aquifer, and infiltration of surface water); 19.27.4.29.D NMAC (requiring that all wells be set back from potential sources of contamination in accordance with NMED regulations and other applicable ordinances and regulations); 19.27.4.30.A NMAC (requiring annular seals when necessary to prevent flow of contaminated or low quality water); 19.27.4.30.A(4) NMAC (requiring annulus sealing and proper screening in

wells which encounter non-potable, contaminated, or polluted water at any depth to prevent commingling of such water with any potable or uncontaminated water).

See NMED Exhibit 1, at 8-9.

25. With the above institutional and government controls and requirements in place to prevent ingestion of groundwater in the Valley Fill Aquifer, the proposed AAS will allow the Department to close out abatement so that the Property can be fully redeveloped. Without the AAS, the Property will remain idle. Therefore, the economic and social benefits of the proposed AAS (which include the above-described institutional and government controls), outweigh the benefits of continuing abatement which is unlikely to achieve 3103 standards. *See* Snyder Testimony, at 9-10.

D. Requirements Met – 20.6.2.4103.F(1)(b)

26. Petitioner has demonstrated that the proposed AAS have been achieved, and their approval will allow immediate submission of an Abatement Completion Report and termination of abatement. *See* NMED Exhibit 1, at 9.

27. The cost of submission of the Abatement Completion Report is negligible relative to what has been spent on abatement activities up to this point. *See id.*

28. Approval of the AAS will allow development to be completed on the Property, which presently lies in a partial state of development, thereby benefitting the Town of Bernalillo. *See id.*

29. Petitioner has therefore demonstrated that the proposed AAS are technically achievable and cost-benefit justifiable.

E. Requirements Met – 20.6.2.4103.F(1)(c)

30. The institutional and government controls outlined above will prevent human exposure to or ingestion of the nitrate impacted groundwater of the Valley Fill Aquifer, rendering the AAS protective of public health. *See* NMED Exhibit 1, at 9-10.

31. Chloride and TDS are not Section 3103.A contaminants and do not present a human health concern. *See* NMED Exhibit 1, at 10.

32. The proposed AAS will free the Property for completion of development, and thus will not cause undue harm thereto. *See id.*

33. Petitioner has therefore demonstrated that the proposed AAS will not create a hazard to public health or undue damage to property.

F. Requirements Met - Other

34. Perpetuity is a reasonable period of time for the variance in this case due to the technical infeasibility of conducting further abatement, the controls that will be in place to prevent hazards to public health, and the need to close out abatement so that the property can be economically developed. *See* Tr. 81:24 – 82:9; NMED Exhibit 1, at 7-9; Snyder Testimony, at 9-10.

35. Petitioner has met the requirements of 20.6.2.4103.F(2) by: identifying the information required by Subsection 20.6.2.1210.A; identifying the contaminants for which alternative standards are proposed; identifying the three-dimensional body of water pollution for which the alternative abatement standards are sought; and identifying the extent to which the standards of 20.6.2.4103 are now, and will be in the future, violated. *See* NMED Exhibit 1, at 10; Snyder Testimony, at 6-7.

Conclusions of Law

1. The Commission has jurisdiction to hear and decide this matter pursuant to NMSA 1978, § 74-6-4 (2009), 20.1.3 NMAC, and 20.6.2.4103 NMAC.
2. The Commission has jurisdiction over Petitioner and the former PVGND site pursuant to the Water Quality Act, NMSA 1978, §§ 74-6-1 through -17, 20.1.3 NMAC, and 20.6.2 NMAC.
3. The Commission may take action to accept, modify, or deny Petitioner's petition for alternative abatement standards.
4. Petitioner has met all applicable requirements for the granting of alternative abatement standards in 20.1.3, 20.6.2.1210.A, and 20.6.2.4103.F NMAC.
5. The numerical values proposed in the Petition for the proposed alternative abatement standards are supported by substantial evidence in the record.
6. Approval of the proposed alternative abatement standards in perpetuity is supported by substantial evidence in the record.

ORDER

Based upon these Findings of Fact and Conclusions of Law, a quorum of the Commission renders the following decision and order:

IT IS THEREFORE ORDERED that:

1. The Commission approves alternative abatement standards for the Valley Fill Aquifer as identified in NMED Exhibit 3.

2. The alternative abatement standards are as follows:

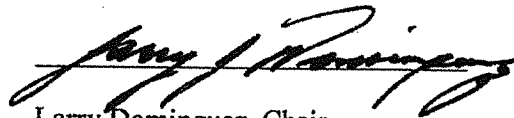
Contaminant	Standard
Nitrate	220 mg/l
Chloride	350 mg/l
TDS	3,310 mg/l

3. The alternative abatement standards are granted in perpetuity.

4. As soon as practicable upon issuance of this Order, Petitioner and the Department shall take the necessary steps to implement the institutional controls proposed in the Petition, namely, the deed restriction and the State Engineer well restriction order.

10-14-16

Date



Larry Dominguez, Chair

Water Quality Control Commission

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Decision and Order Granting Alternative Abatement Standards** was sent via the stated methods below to the following parties on October 14, 2016:

Hand Delivery and email:

Lara Katz, Office of General Counsel
New Mexico Environment Department
Post Office Box 5469
Santa Fe, New Mexico 87502
Email: Lara.Katz@state.nm.us
Counsel for the New Mexico Environment Department

Via First Class U.S. Mail and email:

Pete V. Domenici, Jr., Esq.
Domenici Law Firm, PC
320 Gold Avenue SW
Suite 1000
Albuquerque, New Mexico 87102
Email: pdomenici@domenicilaw.com
Counsel for Petitioner



Pam Castañeda, Commission Administrator



STATE OF NEW MEXICO
COUNTY OF SANDOVAL

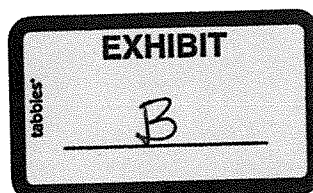
**DEED RECORDATION COVENANT RESTRICTING
AND PROHIBITING USE OF GROUNDWATER**

THIS DEED RECORDATION is made this 6th day of May, 2016 by D&HGP, a resident of Sandoval County, New Mexico, a NM limited partnership ("Owner(s)") with its principal place of business located at PO Box 850, Bernalillo New Mexico 87004, states that it is the legal fee owner and holds title to the below listed real property in Bernalillo County, the State of New Mexico;

WHEREAS, the Owner(s) has, completed the groundwater abatement at the property pursuant to an Alternative Abatement Standard approved by the New Mexico Water quality Control Commission or has an Abatement Completion Report approved by the New Mexico Environment Department and the Groundwater may contain contaminants in excess numerical of ground water quality standards set forth in 20.6.2 NMAC and related statutes and regulations;

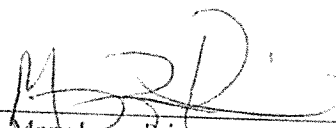
WHEREAS, the Property, located at Lot 5-B, Venada Plaza, as such lot is depicted and described on a replat entitled "Lots 5-A and 5-B, Venada Plaza", which replat was filed in the Office of the County Clerk of Sandoval County, NM, on January 2, 2008 in Volume 3, Folio 2875-A (Book 411 Page 252); and hereby incorporated into this covenant, shall be used only for non-residential purposes and no wells or devices shall be installed on the property to use groundwater and no use of the groundwater shall be allowed;

THEREFORE, the owner of the property prohibits, for itself and all future successors or assigns of the property, installation of wells or any other device to use groundwater and any use of the groundwater is completely prohibited. This restriction and prohibition shall be recorded with the property and is binding on future successors or assigns;



IN WITNESS WHEREOF, the said Owner(s) has caused this instrument to be signed by its authorized representative on the day and year first above written.

By:


Mary Lynn Price
General Partner

~~STATE OF
COUNTY OF~~

~~Subscribed and sworn to before me this _____ day of _____ by~~

~~_____
Notary Public~~

My commission expires:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

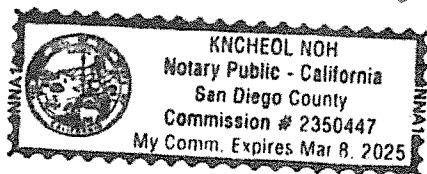
State of California

County of San Diego

Subscribed and sworn to (or affirmed) before me on this 2nd
day of Nov, 2021 by Mary Lynn Price
proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.

(Seal)

Signature 



STATE OF NEW MEXICO

COUNTY OF SANDOVAL

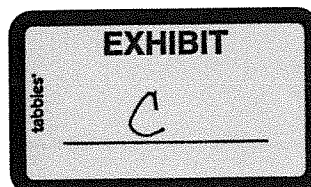
CORRECTIVE DEED RECORDATION COVENANT
RESTRICTING AND PROHIBITING USE OF
GROUNDWATER

THIS DEED RECORDATION is made this day of , 20 by D&G Price, LP, a-
~~resident of Sandoval County, New Mexico,~~ a NM limited partnership ("Owner(s)") with its
principal place of business located at ~~PO Box 850, Bernalillo, New Mexico 87004 12231~~
Academy Rd NE #301, Albuquerque, NM 87111, and states that it is the legal fee owner and
holds title to the below listed real property in ~~Bernalillo~~ Sandoval County, the State of New
Mexico;

WHEREAS, This CORRECTIVE DEED RECORDATION COVENANT
RESTRICTING AND PROHIBITING USE OF GROUNDWATER replaces and corrects that
deed entitled DEED RECORDATION COVENANT RESTRICTING AND PROHIBITING
USE OF GROUNDWATER, recorded at # 2021038696, 11/03/2021, Sandoval County Clerk;

WHEREAS, the Owner(s) has completed the groundwater abatement at the property
pursuant to an Alternative Abatement Standard approved by the New Mexico Water Quality
Control Commission or has an Abatement Completion Report approved by the New Mexico
Environment Department and the Groundwater may contain contaminants in excess numerically of
ground water quality standards set forth in 20.6.2 NMAC and related statutes and regulations;

WHEREAS, on the Property. located at Lot 5-B, Venada Plaza, as such lot is depicted and
described on a replat entitled "Lots 5-A and 5-B, Venada Plaza", which replat was filed in the Office
of the County Clerk of Sandoval County, NM, on January 2, 2008 in Volume 3, Folio 2875-A (Book
411 Page 252); and hereby incorporated into this covenant. ~~shall be used only for non-residential~~
~~purposes and~~ no wells or devices shall be installed on the property to use groundwater and no use of
the groundwater shall be allowed;



THEREFORE, the owner of the property prohibits, for itself and all future successors or assigns of the property, installation of wells or any other device to use groundwater and any use of the groundwater is completely prohibited. This restriction and prohibition shall be recorded with the property and is binding on future successors or assigns.

This CORRECTIVE DEED RECORDATION COVENANT RESTRICTING AND PROHIBITING USE OF GROUNDWATER corrects and replaces, in its entirety, that DEED RECORDATION COVENANT RESTRICTING AND PROHIBITING USE OF GROUNDWATER, recorded at # 2021033896, 11/03/2021, Sandoval County Clerk and such DEED shall become null and void upon recording this CORRECTIVE DEED.;

IN WITNESS WHEREOF, the said Owner(s) has caused this instrument to be signed by its authorized representative on the day and year first above written.

D&G Prices, LP

By: _____
Mary Lynn Price, PR, Estate of Dudley Price
General Partner

STATE OF NEW-
MEXICO _____
COUNTY OF
SANDOVAL _____

Subscribed and sworn to before me this ____ day of _____ by

Notary Public

My commission expires:

STATE OF NEW MEXICO

COUNTY OF SANDOVAL

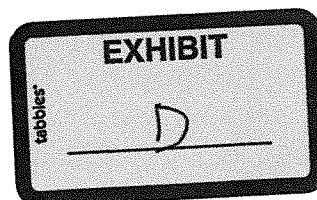
CORRECTIVE DEED RECORDATION COVENANT
RESTRICTING AND PROHIBITING USE OF
GROUNDWATER

THIS DEED RECORDATION is made this day of , 20 by D&G Price, LP, a NM limited partnership ("Owner(s)") with its principal place of business located at 12231 Academy Rd NE #301, Albuquerque, NM 87111, and states that it is the legal fee owner and holds title to the below listed real property in Sandoval County, the State of New Mexico;

WHEREAS, this CORRECTIVE DEED RECORDATION COVENANT RESTRICTING AND PROHIBITING USE OF GROUNDWATER replaces and corrects that deed entitled **DEED RECORDATION COVENANT RESTRICTING AND PROHIBITING USE OF GROUNDWATER**, recorded at # 2021038696, 11/03/2021, Sandoval County Clerk;

WHEREAS, the Owner(s) has completed the groundwater abatement at the property pursuant to an Alternative Abatement Standard approved by the New Mexico Water Quality Control Commission or has an Abatement Completion Report approved by the New Mexico Environment Department and the Groundwater may contain contaminants in excess numerically of ground water quality standards set forth in 20.6.2 NMAC and related statutes and regulations;

WHEREAS, on the Property, located at Lot 5-B, Venada Plaza, as such lot is depicted and described on a replat entitled "Lots 5-A and 5-B, Venada Plaza", which replat was filed in the Office of the County Clerk of Sandoval County, NM, on January 2, 2008 in Volume 3, Folio 2875-A (Book 411 Page 252) and hereby incorporated into this covenant, no wells or devices shall be installed on the property to use groundwater and no use of the groundwater shall be allowed;



THEREFORE, the owner of the property prohibits, for itself and all future successors or assigns of the property, installation of wells or any other device to use groundwater and any use of the groundwater is completely prohibited. This restriction and prohibition shall be recorded with the property and is binding on future successors or assigns.

This CORRECTIVE DEED RECORDATION COVENANT RESTRICTING AND PROHIBITING USE OF GROUNDWATER corrects and replaces, in its entirety, that DEED RECORDATION COVENANT RESTRICTING AND PROHIBITING USE OF GROUNDWATER, recorded at # 2021033896, 11/03/2021, Sandoval County Clerk and such DEED shall become null and void upon recording this CORRECTIVE DEED.

IN WITNESS WHEREOF, the said Owner(s) has caused this instrument to be signed by its authorized representative on the day and year first above written.

D&G Price, LP

By: _____
Mary Lynn Price, PR, Estate of Dudley Price
General Partner

STATE OF _____

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____ by

Notary Public

My commission expires:

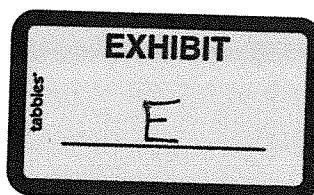
Transcript of the Testimony of **Hearing**

Date: September 13, 2016

Case: Price's Valley Gold North Dairy

Printed On: September 25, 2016

Trambley's Court Reporting
Phone:(505) 292-2120
Email:strambley@windstream.net



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1 couple of years constitutes the record by which we will
2 meet this standard and, therefore, granting the
3 alternative standard means that we have met this
4 requirement.

5 Once we make this requirement on the cost benefit
6 justifiable, we need to abandon our wells and properly
7 restore them in accordance with state engineer rules.
8 That's a de minimis cost relative to what Prices have
9 spent on abatement to date. Again, it will allow this
10 property to complete its development, which will benefit
11 the Town of Bernalillo as well.

12 Number 3, compliance with the standard will not
13 create a present or future hazard to public health or
14 undue damage to property. Again, I've covered this.
15 The chlorine and TDS are not human health concerns.
16 They were not listed with the carcinogens and nitrate
17 and bad metals in 3103-A. They are in other parts. So
18 we're not worried about them from a human health
19 concern. The nitrate, we can prevent exposure. So that
20 requirement is met.

21 So in conclusion, what we're asking for is based
22 on the last several years of the last couple of decades
23 of groundwater monitoring data -- so what we're asking
24 for is technically achievable as it's requested. It
25 will allow the former dairy to proceed with submitting

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1 an abatement completion report, which will allow the
2 Secretary to terminate abatement. We'll plug the wells,
3 and development can move forward.

4 Once they are completed, again, development,
5 continued completion, the administrative controls will
6 be permanent. The OSE prohibition will be permanent,
7 and in fact, approving the AAS will allow the
8 development to proceed. The worth of the property on
9 the tax rolls to the Town of Bernalillo will be restored
10 and it will benefit all parties.

11 With that, we're ready for John's testimony.

12 MR. HOLAPPA: Mr. Domenici, did you have
13 additional direct examination of Mr. Snyder?

14 MR. DOMENICI: No, I don't.

15 MR. HOLAPPA: Mr. Domenici, how long were
16 you anticipating Mr. Price's testimony lasting?

17 MR. DOMENICI: Ten minutes. He has two
18 exhibits. Very quick.

19 MR. HOLAPPA: I'm going to turn the matter
20 over to the chairman for the moment if he wants to get a
21 sense if the Commission would like to proceed with
22 Mr. Price's testimony or if we would like to recess for
23 lunch.

24 MR. DOMINGUEZ: I'll query the Commission if
25 they've got any specifics, but as I see, we still have

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1 his testimony, and then we would go into the Environment
2 Department's and -- questioning, et cetera. So we still
3 have a fair amount of stuff to work through. I would
4 possibly suggest that this is -- seeing the time and
5 what the Commission has heard, this might be a good
6 natural break to break for lunch.

7 Commission members, any difference one
8 direction or the other?

9 MS. DE ROSE BAMMAN: That's fine. Let's
10 break.

11 MR. DOMINGUEZ: Mr. Hearing Officer, why
12 don't we go ahead and use this as a natural break.

13 MR. HOLAPPA: Thank you, Mr. Chairman,
14 Commissioners.

15 Mr. Domenici, I think we'll recess for lunch
16 at this time, pick up with Mr. Price after the lunch
17 hour.

18 I take it the Commission would break for an
19 hour for lunch. So the time is 12:35. We'll meet back
20 at 1:35. We'll be in recess until that time.

21 (Recess taken from 12:35 p.m. to 1:35 p.m.
22 and testimony continued as follows:)

23 MR. HOLAPPA: I think we're all back from a
24 lunch hour. We'll reconvene. Again, this is Case
25 Number WQCC 16-02 (A) [sic]. It is 1:36 p.m. When we

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1 left off, Mr. Domenici was about to call his second
2 witness, Mr. Price.

3 Mr. Price, you are under oath already.

4 So with that, Mr. Domenici, you may proceed
5 with your witness.

6 * * * * *

7 JOHN PRICE

8 after having been first duly sworn under oath,
9 was questioned and testified as follows:

10 EXAMINATION

11 BY MR. DOMENICI:

12 Q. Mr. Price, please introduce yourself to the
13 Hearing Officer and the Commission.

14 **A. My name is John Price. And for the last**
15 **20 years, I've been the vice-president of DG Farms,**
16 **which Price's Valley Gold dairies operates under.**

17 Q. Mr. Price, in the Statement of Intent that was
18 filed, there is a summary of your testimony starting on
19 page 2 going through page 6. Do you adopt that
20 testimony as -- do you adopt that as your sworn
21 testimony?

22 **A. Yes, I do.**

23 Q. Okay. Let's turn to the dairy itself. Do you
24 have a general statement that you could provide, real
25 high level overview, of your involvement?

14 (Pages 50 to 53)

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1 A. I do. As I stated, for the last 20 years, I've
2 been vice-president of DG Farms, Price Valley Gold Dairy
3 overseeing environmental concerns and real estate sale
4 of the land. Just a little bit of history, the
5 Bernalillo dairy farm that we have in front of you today
6 was closed in 1998, basically due to residential
7 encroachment and environmental concerns. DG Farms is
8 the corporation under which Price's Valley Gold Dairy
9 was held and operated in New Mexico since 1932, with
10 this, the last farm, which was closed in 1998.

11 Mary Price, my great-grandmother, started the
12 company in 1906 with one cow in El Paso, Texas.
13 DG Farms no longer has any assets. As the remaining 7
14 and 7.4 acres that we're here respectfully asking for
15 AAS was transferred into a limited partnership under the
16 name D&G Limited Partnership to distribute assets to
17 family members. "G" of the D&G was Gloria Price, and
18 she passed away last year. DG Farms also facilitated
19 the creation of the new 570-acre urban wildlife refuge
20 called Valle De Oro through donation and sales
21 arrangement. Valle De Oro was Valley Gold Dairy of the
22 South Valley and of course means Valley Gold in Spanish.

23 In 1998, when we began seeking environmental
24 closure, Dudley Price, my dad back here, was 66 years
25 old, and now 18 years of effort and much money later,

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1 he's now 84 years old. He doesn't mind I gave his age.

2 Please help me let this iconic dairy pioneer
3 finally retire by granting us this alternative abatement
4 standard petition.

5 Q. Mr. Price -- if I could have Mr. Snyder put one
6 slide up -- did you compile a summary of costs that --
7 environmental costs that have been expended at this
8 site?

9 A. No. Mr. Domenici, I didn't. I had our
10 accountant, who has done -- our CPA, who has done our
11 books for the last, I'd say, 40 years compile through
12 his general ledgers the amount of expense that we've put
13 out for environmental, legal, and any other expenses
14 involving this remediation and release from New Mexico
15 Environmental Department.

16 Q. For the record, this is Exhibit 11 in the
17 Petitioner's Statement of Intent?

18 A. Yes.

19 Q. So what conclusion -- what is the summary cost
20 that your accountant came up with?

21 A. As you see up on the board, it's a little over
22 \$1,600,000 since 1998. As you also see, that goes
23 through 2015. That doesn't include what we've spent in
24 the nine months of 2016.

25 Q. What portion of this, approximately, was spent on

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1 what Mr. Snyder shows the Valley Fill for the seven
2 acres in the southeast corner?

3 A. As a percentage, it would be probably not
4 accurate for me to estimate, but as you can see from
5 basically 2008 through 2013 or '14, that's when the
6 majority of it -- the in situ situation was tried in the
7 extraction wells and all of the different -- I think the
8 total of 48 different wells were drilled on this
9 property.

10 Q. Let me ask you to turn to the next exhibit. For
11 the record, this is Exhibit 12. Perhaps you could just
12 explain what this means.

13 A. When the land was replatted, the Sandoval County
14 assessor assigned this land the same value as the
15 adjoining land, some of it which has been developed, and
16 finally, because we weren't able to sell this land due
17 to this environmental restriction, the assessor agreed
18 that the value of the land was much less than it's on
19 the tax rolls for, and so they made an adjustment, as
20 you see down below, and brought it down to \$176,344 from
21 1,278,344.

22 Q. Mr. Price, have you been actively involved in
23 overseeing the environmental abatement activities?

24 A. I have.

25 Q. And has the course of this abatement been

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1 stressful on your father and your family?

2 A. It has. I guess I kind of stated, you know, my
3 family -- I'm four-generation. This dairy was my first
4 job when I was 14. It was part of our lifestyle. I
5 think everybody that's been in New Mexico identifies
6 with Valley Gold Dairies or Price's Valley Gold. We've
7 tried to be good stewards to New Mexico. We've tried to
8 be pioneers in the dairy industry and operate with lots
9 of integrity. And we have wanted to get closure on this
10 and do the right thing and move on and retire my dad,
11 and I'm here today hoping that we've done enough work
12 and spent enough money on it that everybody, the
13 Commissioners will see that there's not much more we
14 believe we can do to make this thing different.

15 Q. What do you envision as the type of use beyond
16 the surface of that?

17 A. Ultimately -- and I've spent 22 years as a real
18 estate broker, and I do not currently hold a license,
19 but if I was to envision the use of this land, it would
20 probably be some type of office warehouse. It doesn't
21 have retail visibility. It sits at the oxbow of this
22 arroyo. So it is kind of being at the edge of one of
23 the concrete channels with AMAFCA and Albuquerque, but I
24 would estimate it to be some type of warehouse
25 situation.

15 (Pages 54 to 57)

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1 MR. DOMENICI: That's all I have. Thank
2 you.

3 MR. HOLAPPA: All right.

4 Ms. Katz, did you have cross-examination for
5 the panel?

6 MS. KATZ: No. The Department doesn't have
7 any questions for this panel.

8 MR. HOLAPPA: In that case, we'll proceed to
9 questions from the Commission for Petitioner's panel.

10 Mr. Snyder, I don't know if you can maybe
11 just want to move next to -- off to the table and get
12 close enough to a microphone.

13 I thought we would leave that up for the
14 questions in case one of the Commissioners had a
15 question about the slide. With that, I would ask the
16 Commissioners if they have questions for the
17 Petitioner's panel.

18 MR. PATTISON: Thank you. I guess
19 Mr. Snyder can probably answer most of my questions.

20 Is this less-than-seven-acres essentially a
21 perched aquifer, Valley Fill Aquifer? Is that what is
22 called a perched aquifer.

23 MR. SNYDER: Yes. The Valley Fill Aquifer
24 is perched on a low permeability unit in the Santa Fe
25 Group, Upper Santa Fe Group sediments, and as I showed

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1 Valley Fill Aquifer.

2 MR. PATTISON: Okay. Is it going out on the
3 same side geographically?

4 MR. SNYDER: Pardon?

5 MR. PATTISON: Is the water going in and out
6 of the aquifer on the same side?

7 MR. SNYDER: Yes. Pretty much on the east
8 and the southeast part of the wedge. So if you picture
9 it as a big wedge of cheese, the flux of water in and
10 out of the Rio Grande alluvial system into the Valley
11 Fill Aquifer is through the thick side of the wedge of
12 cheese, if you will, and that's where the exchange is.
13 The water that's up on the perching layer just tends to
14 move to and fro as the gradients reverse. This is --
15 with decades of data, there is -- there's one monitor
16 well, 21, I believe it is, that is a little farther
17 south than most of the figures I depicted. But it's a
18 sentinel well that was put in years ago, and it's always
19 been clean.

20 So the movement of water out of this Valley
21 Fill Aquifer and out into the Rio Grande alluvium and
22 then down subparallel to the river flow has never been
23 detected.

24 MR. PATTISON: Has never been what?

25 MR. SNYDER: Has never been detected.

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1 it, it's separated from the underlying Upper Santa Fe
2 Group aquifer by about 10 feet of water level
3 difference.

4 MR. PATTISON: Is there any flowing in this
5 aquifer?

6 MR. SNYDER: There is. There's change of
7 water to and fro, as was mentioned, with the Rio Grande
8 alluvial aquifer, which if you recall the
9 cross-sections, those water levels in the Rio Grande
10 alluvial aquifer are above those in the Upper Santa Fe
11 Group as well. So it acts as one system in the shallow
12 percents.

13 MR. PATTISON: Is the inflow of water mainly
14 to the percolation from the rainfall on the seven acres?

15 MR. SNYDER: No, I don't believe so. I
16 believe that the inflow of water is related to an
17 increase in water level in the Rio Grande alluvium, and
18 then that causes water movement into the Valley Fill
19 Aquifer from the east to the west or the southeast to
20 the north.

21 MR. PATTISON: The water that comes in then
22 would be because of the increase in water in the
23 Rio Grande?

24 MR. SNYDER: Right. When the Rio Grande
25 water levels are up, that's when water moves into this

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1 MR. PATTISON: I see.

2 MR. SNYDER: So the contamination is really
3 stranded up in this perched area.

4 MR. PATTISON: That's what I was trying to
5 establish in my mind, that that was -- the inflow and
6 outflow of the water from the Rio Grande to this aquifer
7 is not mixed with the contaminated water? That's in the
8 perched part of the aquifer?

9 MR. SNYDER: That is correct.

10 MR. PATTISON: Okay. Now, then, if the
11 seven acres was sold to the warehouse operation and they
12 had the roof of the warehousing and all of the parking
13 lot and everything, it would be hardly any percolation
14 as there isn't now, probably? Is that a fair
15 assumption?

16 MR. SNYDER: Yes, sir. That's true. If
17 that were the case, if it was paved, most of it would
18 just run off.

19 MR. PATTISON: Okay. So essentially from
20 your data over the number of years that you've been
21 working on it would indicate that from now on into the
22 future, the contamination of any other water of this
23 perched aquifer would be minimal, if any?

24 MR. SNYDER: That is correct.

25 MR. PATTISON: Okay. Thank you.

16 (Pages 58 to 61)

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1 Thank you, Hearing Officer.

2 MR. HOLAPPA: Additional questions from the
3 Commission?

4 Ms. De Rose Bamman.

5 MS. DE ROSE BAMMAN: Thank you.

6 Were there any data collected for the
7 surface water to see if the groundwater impacted the
8 Rio Grande? You said that the Rio Grande can charge
9 that very shallow part?

10 MR. SNYDER: It doesn't -- the alluvial
11 aquifer -- there were some monitoring wells down in the
12 Rio Grande alluvial aquifer years ago because there was
13 a land application area out there that was maintained
14 during full dairy operations. There were monitored
15 wells out there at that time. And that area hasn't
16 really been under my purview because it was closed out
17 and those parts of the dairy closed out years ago. So
18 the groundwater situation there had to have been
19 acceptable for closure of those units out there.

20 When you think about the water flowing from
21 the alluvial aquifer into the Valley Fill Aquifer, it's
22 really just enough water to raise the water levels and
23 cause a slight push back. I mean, as the river water
24 levels come up with the river stage and the flood plain
25 alluvial waters come up with the river stage, it is

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1 Nonetheless, it causes water levels to rise.

2 MS. DE ROSE BAMMAN: Okay. The other
3 question I had is regarding your request for the length
4 of time, the period of time which the variance is
5 desired, which is on page 6 of your petition, 2.1,
6 part 9. The period of time is in perpetuity. Where is
7 our authority to grant it for that length of time?

8 I guess this is to Mr. Domenici.

9 MR. DOMENICI: The alternative abatement
10 standard regulation in my view contemplates a permanent
11 standard. So whether it is permanent or in perpetuity
12 is different ways of looking at it of the same thing.
13 So we are requesting a permanent standard for this
14 location, and I think it comes out of the statute that
15 counsel for the Environment Department stated and your
16 regulation. If you read it in context of your
17 regulation, you have a variance that has a time limit.
18 So this is what is available when a limited period of
19 time won't work or won't be sufficient. That's how I,
20 at least, have always interpreted alternative abatement.
21 It is a way to request a permanent change of the
22 standard.

23 MS. DE ROSE BAMMAN: Thank you.

24 MR. HOLAPPA: Commissioner Hutchinson?

25 MR. HUTCHINSON: It was mentioned that

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1 going to raise the water level behind it in this Valley
2 Fill Aquifer. But that flux of water only needs to be
3 the volume to raise the water levels a foot or so. So
4 it is not like it is a huge flux of water in, nor when
5 the river stage drops is a huge flux of water out of the
6 system, which is why it just kind of moves back and
7 forth.

8 The previous consultant that submitted the
9 last amended abatement plan, Metric Corporation, they
10 did quite a bit of groundwater modeling to simulate how
11 this plume moves and kind of oscillates, almost like an
12 amoeba, if you can picture it, as these water levels
13 change as they plugged in all of their quarterly data
14 for these shifts and gradient. However, that was never
15 comprehensively published and submitted, but it was file
16 record that I reviewed, and it does show what is going
17 on there.

18 But there's not a net movement of
19 contamination. Say, the lines, where the injection line
20 was and then where our extraction line is, that general
21 vicinity, there's really no evidence of a big push of
22 contamination away from there back up into the wedge a
23 significant distance, nor a flux of water off of the
24 wedge and out into the valley -- I'm sorry, the
25 Rio Grande alluvial aquifer. So it is a minor exchange.

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1 Bernalillo is going to enact an ordinance prohibiting
2 well drilling in the vicinity. What is the status of
3 that ordinance? Is that something that's just future
4 possibility?

5 MR. PRICE: I don't know. I think maybe
6 there's a confusion. From what I understand, Bernalillo
7 can't and doesn't have jurisdiction over the OSE. The
8 OSE is going to restrict it, and then we have included
9 in here somewhere private restriction so a well cannot
10 be constructed.

11 MR. DOMENICI: So Commissioner Hutchinson, I
12 may have misstated that. There are quite a few
13 municipalities that do restrict domestic wells. My
14 understanding, which I may be incorrect, when this area
15 was platted and they required a hookup, that they
16 prohibit drilling along with that.

17 MR. PRICE: I can elaborate on that. The
18 Town of Bernalillo -- we paid for their sewer treatment
19 plant and water expansion through hookup fees that were
20 related to building permits for the residential units in
21 Santiago and also for the commercial, and through that,
22 Bernalillo, we put infrastructure in throughout all the
23 streets and this Venada Plaza plat, along with the
24 Santiago and for the residential units on the west side
25 of Highway 528. So Bernalillo has full infrastructure

17 (Pages 62 to 65)

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1 in this area. They require any new permit, whether it
2 is residential or commercial, be hooked up to Town of
3 Bernalillo sewer and water. So they don't let anybody
4 get away with a drinking well because all of their
5 infrastructure is there, and I think the way their
6 statute reads, it's within 200 feet of the sewer line
7 and their sewer lines and waterlines are in all the
8 roads.

9 MR. HUTCHINSON: So that ordinance is in
10 place? It is not --

11 MR. PRICE: That ordinance is. As far as
12 drilling a well, I can't speak to that. I'm not sure,
13 but I know with OSE, they recently -- I received their
14 copy of enforcing a restriction from the state engineer,
15 which any well would have to be permitted through.

16 MR. HUTCHINSON: The same goes to my next
17 question here. There was mention that a deed
18 restriction would be placed?

19 MR. PRICE: Yes.

20 MR. HUTCHINSON: Is that a future action?

21 MR. PRICE: Well, it is a future action, but
22 there's an exhibit in here that has a deed restriction
23 within it. I'm not sure what number exhibit it is.

24 MR. SNYDER: I think it's attachment H of
25 Exhibit 2, the original petition. I think it's one of

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1 was done -- can I move the slide quickly? The only
2 extensive pumping test that was done -- so the well --
3 you see MW-1A, which is marked 110 for concentration,
4 just east of it is a well called RW. That is the well
5 that was long-term pumped. Into that rectangular black
6 plastic-lined lagoon in the injection photographs that
7 was in there, the water was pumped out of that well and
8 into that lagoon for an extended period of time. I
9 wasn't the consultant at the time so John can correct
10 me, but I think it was two, three days' worth.

11 MR. PRICE: Yes. The whole history of that
12 is we were required by NMED to construct the lined
13 lagoon at the expense of about \$50,000 to do a 48-hour
14 pump test because there was no longer any room to do any
15 kind of land application for the water that we were
16 pumping out even though the land was still available.
17 So that's what that square -- rectangular square was,
18 was a lined pond to do a pump test with compliance with
19 NMED.

20 MR. SNYDER: To go to your question, that
21 test demonstrated, you know, the virtual complete
22 communication between this wedge that we call Valley
23 Fill Aquifer and Rio Grande alluvium, because it is
24 right on that boundary. So effects were seen, of
25 course, in both directions. And the results of that

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1 the very last attachments.

2 MR. HUTCHINSON: But that has not been
3 filed?

4 MR. PRICE: At this point, that's not been
5 filed.

6 MR. SNYDER: Maybe G.

7 MR. PRICE: Of course, the land is not
8 really sellable at this point, either.

9 MR. HUTCHINSON: Okay. Are there any wells,
10 any drinking water wells that are anywhere near this
11 site?

12 MR. PRICE: No.

13 MR. HUTCHINSON: Thank you.

14 Thank you, Mr. Hearing Officer.

15 MR. HOLAPPA: Sure. Any additional
16 questions for Petitioner's panel from the Commission?
17 Mr. Johnson.

18 MR. JOHNSON: Mr. Snyder, you testified
19 about the 10-foot water level difference between your
20 aquifer water levels and the Upper Santa Fe Group
21 aquifer. Are there any other data that go to that
22 question of hydraulic separation between those units,
23 pump test data, water quality data that further bolster
24 that separation between the two aquifers?

25 MR. SNYDER: The only extended pumping test

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1 test is what Mr. Bart Faris, the NMED, and I used to
2 agree upon the alignment of our extraction wells to make
3 sure we were principally focused on the wedge and not --
4 because we can go out in the alluvium and pump -- I
5 could have gone out to the alluvium and pumped a pore
6 volume real fast with how permeable it is out there.
7 This thinner wedge to the east is where we wanted to
8 focus our pumping tests at.

9 The only information we have regarding this
10 being separated from the underlying aquifer is the head
11 difference over a spatially very short distance, and so
12 I will go back to -- and, again, I apologize because
13 some of these are difficult to read. But this one right
14 here, the water level up in the 11-R, I believe, is 26.5
15 or something like that. Our water levels down in the
16 Valley Fill Aquifer are 38 to 40-ish. So there's a real
17 sensible -- so the hydraulic gradient that you would
18 have between those two points, if they weren't
19 disconnected, would be too steep to really be sustained
20 naturally.

21 Again, though, I think -- it's not -- that
22 separation is in response to the Santa Fe Group water
23 levels being lower just from general basin withdrawal.
24 If Albuquerque vanished and pumping stopped for a long
25 time, then the water levels would probably come up, you

18 (Pages 66 to 69)



STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
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FAX: (505) 827-3806

September 8, 2016

Lara Katz, Assistant General Counsel
New Mexico Environment Department
Groundwater Bureau
P.O. Box 5469
Santa Fe, NM 87502-5469

RE: Petition filed by D&G Price Limited Partnership for the former Price's Valley Gold North Dairy

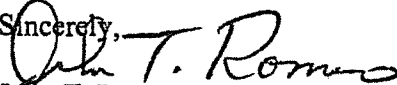
Dear Ms. Katz:

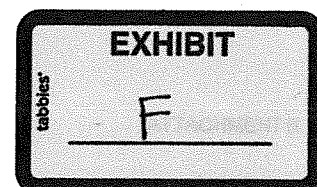
This letter acknowledges that the Office of the State Engineer has been working with the New Mexico Environment Department in the matter of the former Price's Dairy petition before the Water Quality Control Commission seeking approval of alternative abatement standards.

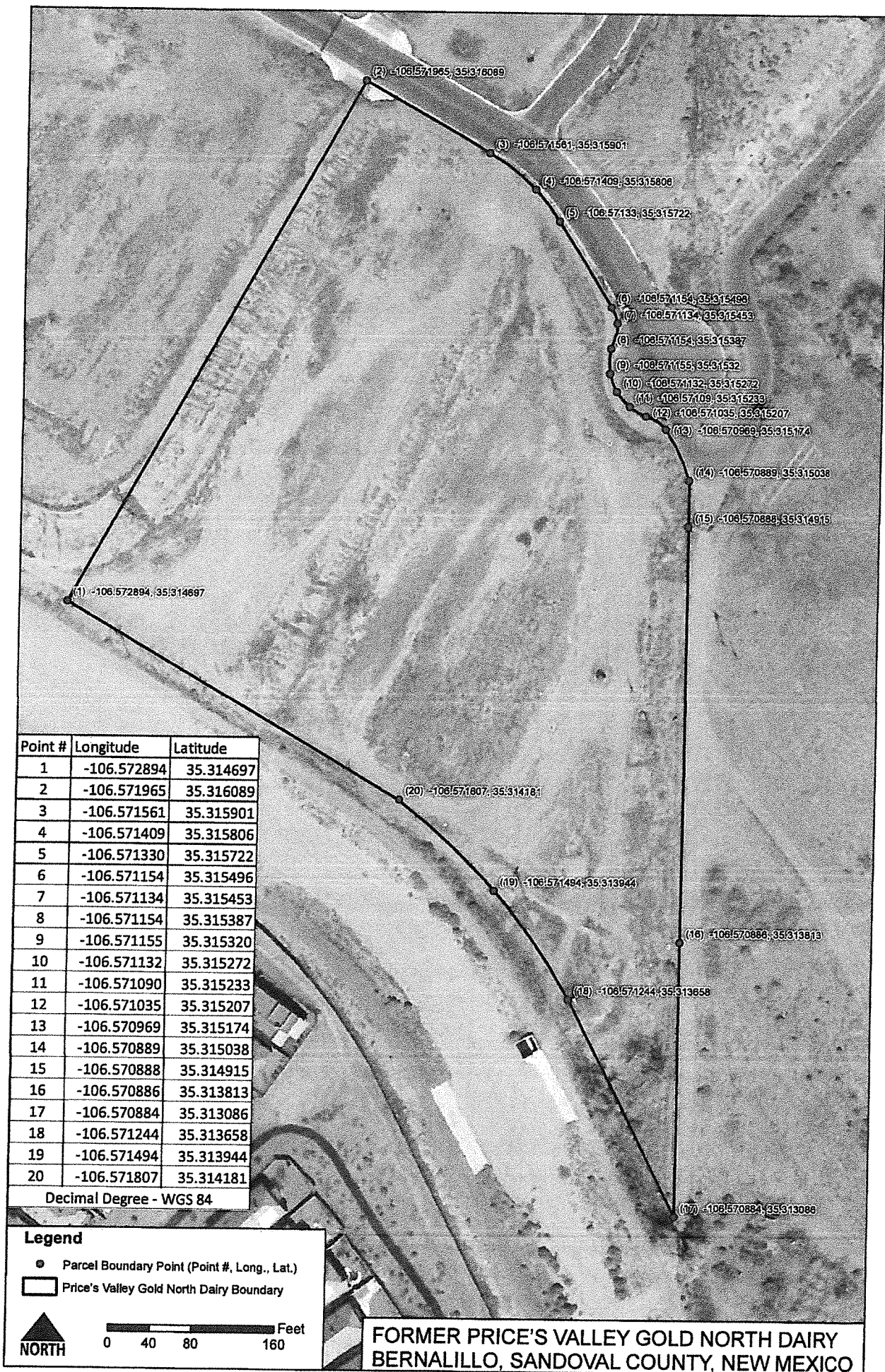
As you are aware, when NMED seeks drilling restrictions in conjunction with alternative abatement standards proposals, after review and adequate public notice, and upon WQCC approval, the State Engineer will typically issue an order restricting the drilling and completion of wells within the area of contamination, for a time to be determined either by NMED or the WQCC. The area of contamination is added to the agency permit mapping system and also to maps on the OSE website that alert the public of the restriction. While every effort will be made to ensure permits to drill are conditioned properly, the Office of the State Engineer shall not be held liable if these mechanisms are circumvented.

In the present case of the former Price's Dairy, because contamination is expected to remain at high levels for the foreseeable future, OSE intends to issue such a restriction at Lot 5-B, Venada Plaza, as depicted and described on the replat entitled "Lots 5-A and 5-B, Venada Plaza." This replat was filed in the Office of the County Clerk of Sandoval County, NM, on January 2, 2008 in Volume 3, Folio 2875-A (Book 411 Page 252).

Please let me know if further discussion would be helpful.

Sincerely,

John T. Romero, P.E.
Director, Water Rights Division







SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

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BUTCH TONGATE
Cabinet Secretary - Designate

J.C. BORREGO
Deputy Secretary

January 20, 2017

John Romero
Director, Water Rights Division
Office of the State Engineer
Bataan Memorial Building
PO Box 25102
Santa Fe, NM 87504-5102

RE: Request for Well Drilling Moratorium at the Former Price's Valley Gold North Dairy, Bernalillo, Sandoval County, New Mexico

Dear Mr. Romero:

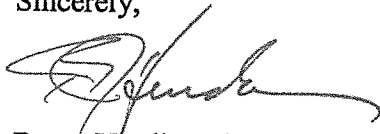
This letter constitutes the New Mexico Environment Department's formal request for a State Engineer's order under 19.27.5.13.A NMAC ("Order") restricting the permitting of new wells in the Valley Fill Aquifer ("VFA"), a localized wedge-shaped perched aquifer of limited extent underlying a portion of the former Price's Valley Gold North Dairy in Sandoval County, New Mexico. The requested Order is in connection with a Decision and Order Granting Alternative Abatement Standards ("WQCC Order") issued by the New Mexico Water Quality Control Commission ("WQCC") on October 14, 2016 (Attachment A). The WQCC Order grants alternative abatement standards ("AAS") for nitrate, chloride, and total dissolved solids in the perched VFA.

Prior to submitting the Petition for Alternative Abatement Standards to the WQCC, the Petitioner, D&G Price Limited Partnership, and the New Mexico Environment Department ("NMED") Ground Water Quality Bureau worked with Office of the State Engineer ("OSE") staff to ensure that the OSE had sufficient information to issue the Order if the WQCC were to grant the Petition. Additionally, Petitioner and NMED worked with OSE to craft the public notice for the hearing on the Petition such that it expressly included information regarding the proposed OSE well restrictions. Accordingly, you signed a letter dated September 8, 2016 on behalf of the OSE (Attachment B) confirming that the OSE had reviewed the information and would issue the Order upon NMED's formal request should the WQCC grant the Petition. That letter was presented as an exhibit in the hearing before the WQCC on the Petition as part of the demonstration that the requested AAS would not create a hazard to human health.

By this letter, NMED now formally requests that the OSE issue an order to restrict the permitting of new wells within the area for which the AAS were adopted, in order to protect human health. The estimated extent of the contaminated groundwater exists entirely within the area delineated on the figure and coordinates provided in Attachment C hereto. As set forth in the WQCC Order, the Order shall apply only to the VFA and the restrictions shall remain in place in perpetuity or until such time as the groundwater concentrations have decreased to WQCC standards set forth in 20.6.2.3103 NMAC. The restrictions must be applicable to any proposed water wells (public or private) within the VFA in the specified area. Please note that the restrictions should exclude permit applications for installation of monitoring wells intended to measure contaminant concentrations in the VFA.

We look forward to a response at your earliest convenience and thank you in advance for your cooperation and assistance in this matter. If you have any questions or require any additional information, please contact Ali Furmall, Manager, Remediation Oversight Section at (505) 827-0078.

Sincerely,



Bruce Yurdin, Director
Water Protection Division

Attachment A: Decision and Order Granting Alternative Abatement Standards
Attachment B: September 8, 2016 Letter from John Romero to Lara Katz
Attachment C: Map and Coordinates for the Valley Fill Aquifer

cc: Wayne Canon, District I Supervisor, Office of the State Engineer
Kristofer Knutsen, Attorney for OSE
Ali Furmall, Manager, GWQB-ROS
Michelle Hunter, Chief, GWQB
Lara Katz, Assistant General Counsel, NMED-OGC
Pete Domenici, Attorney for D&G Price LP, pdomenici@domenicilaw.com
Jay Snyder, EA Engineering & Science, jsnyder@eaest.com
ROS Read File